

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MADELYN TAMAREZ,

Plaintiff,

-v-

KATHLEEN HOCHUL, GOVERNOR, et al.,

Defendants.

CIVIL ACTION NO.: 21 Civ. 10678 (GHW) (SLC)

ORDER OF SERVICE

SARAH L. CAVE, United States Magistrate Judge:

Plaintiff Madelyn Tamarez, who is currently incarcerated at Rikers Island, is proceeding pro se and in forma pauperis (“IFP”). Because she has been granted permission to proceed IFP, Ms. Tamarez is entitled to rely on the Court and the U.S. Marshals Service (“USMS”) to effect service. Walker v. Schult, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); see also 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Ms. Tamarez filed her Complaint against, among others, New York State Governor Kathy Hochul and the New York State Department of Corrections and Community Supervision (the “State Defendants”). (ECF Nos. 1, 9). On January 27, 2022, the Honorable Gregory H. Woods issued an order directing service on the State Defendants through the USMS. (ECF No. 9 at 5).¹

The Court has learned, however, that efforts to serve the State Defendants have been unsuccessful. The USMS reports that it mailed to the State Defendants acknowledgement forms

¹ Judge Woods requested that Defendants the City of New York and New York City Department of Correction Commissioner Louis Molina (the “City Defendants”) waive service. (ECF No. 9 at 4). On February 28, 2022, the City Defendants waived service. (ECF No. 15). Judge Woods dismissed Ms. Tamarez’s claims against the other named defendants for failure to state a claim. (ECF No. 9 at 3).

requesting waivers of service, but received no response. Thereafter, the USMS mailed to the State Defendants by first class mail additional copies of the Summons and Complaint. The State Defendants have not acknowledged receipt of the Summons and Complaint or otherwise appeared in this action.

Rather than direct the USMS to make further efforts to serve the State Defendants, the Court requests that the New York State Attorney General, who is the attorney for and agent of the State of New York, acknowledge receipt of the Summons and Complaint, see N.Y. C.P.L.R. § 312-a, or otherwise waive service of process for the State Defendants. The Court reminds the Attorney General and the State Defendants of their duty under Rule 4(d)(1) of the Federal Rules of Civil Procedure and N.Y. C.P.L.R. § 312-a to avoid unnecessary expenses of serving the summons, and that if the State Defendants fails to accept service by mail, they may be required to pay expenses incurred in serving the Summons and Complaint in any other manner permitted by law, and the cost of such service as permitted by law will be entered as a judgment against them. See N.Y. C.P.L.R. § 312-a.

The Court sua sponte grants Ms. Tamarez an extension of time to serve the State Defendants, to **July 6, 2022**.

The Clerk of Court is respectfully directed to send by certified mail a copy of this Order and the Complaint to the New York State Attorney General at: 28 Liberty Street, New York, New York 10005.

Dated: New York, New York
May 5, 2022

SO ORDERED.



SARAH L. CAVE
United States Magistrate Judge